

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY TURINO,

Defendant.

Case No. : 2:09-cr-00132-JAD-GWF

ORDER

Motion - #351

This matter is before the Court on Defendant's Motion to Strike Surplusage (#351), filed on August 23, 2015. The Government filed its Opposition to Defendant's Motion to Strike Surplusage (#364) on September 9, 2015 and Defendant filed his Reply (#369) on September 15, 2015. The Court conducted a hearing in this matter on October 16, 2015.

BACKGROUND

The Grand Jury returned a Second Superseding Indictment (#63) against Defendant Turino on March 24, 2010, charging him with the following: (1) conspiracy to conduct or participate in racketeering activity in violation of 18 U.S.C. § 1962(d); (2) conspiracy to sell unregistered securities, to make false statements to the SEC, to evade filing periodic reports, and to commit securities fraud and insider trading in violation of 15 U.S.C. §§ 77e, 77q, 77x, 78m, 78j, and 78ff; (3) conspiracy to commit securities fraud in violation of 18 U.S.C. § 1349; (4) three counts of fraudulent interstate securities transactions in violation of 15 U.S.C. §§ 77q and 77x; (5) four counts of securities fraud and insider trading in violation of 15 U.S.C. 78j and 78ff; (6) two counts of securities fraud in violation of 18 U.S.C. § 1348; (7) fraudulent interstate securities transactions in violation of 15 U.S.C. §§ 77q and 77x; and (8) conspiracy to commit money laundering in violation

1 of 18 U.S.C. § 1956(h). The second superseding indictment also sets forth several forfeiture
 2 allegations. *See Second Superseding Indictment* (#63).

3 In his motion, Defendant requests the Court strike several paragraphs and portions of
 4 paragraphs¹ of the indictment which he believes “amounts to prejudicial, inflammatory and
 5 irrelevant allegations” and should be stricken as surplusage. *Motion to Strike* (#351), 2:22.
 6 Defendant also asserts that the Government attempts to impermissibly argue its case in several
 7 instances throughout the indictment. The Government argues that an indictment, by its nature, must
 8 contain inculpatory facts and that Defendant has failed to show how the information contained
 9 therein “is improperly inflammatory or carries any potential for prejudice beyond its intrinsically
 10 inculpatory nature.” *Opposition* (#364), 3:6-7.

11 DISCUSSION

12 Pursuant to Rule 7, an indictment “must be a plain, concise, and definite written statement of
 13 the essential facts constituting the offense charged... .” Fed.R.Crim.P. 7. Rule 7(d) provides that
 14 “[u]pon the defendant's motion, the court may strike surplusage from the indictment or
 15 information.” “The purpose of a motion to strike under Fed.R.Crim.P. 7(d) is to protect a defendant
 16 against ‘prejudicial or inflammatory allegations that are neither relevant nor material to the
 17 charges.’” *United States v. Terrigno*, 838 F.2d 371 (9th Cir. 1988) (quoting *United States v.*
 18 *Ramirez*, 710 F.2d 535, 544–45 (9th Cir. 1983)). An indictment is inculpatory by nature and a
 19 defendant must demonstrate how an individual statement is improperly inflammatory or prejudicial.
 20 *See United States v. Whittemore*, 2013 WL 1181915 (D. Nevada 2013). However, while facts in the
 21 indictment “may be somewhat prejudicial,” they should not be stricken if they are “relevant and
 22 material to the charge[d]” offenses. *Terrigno*, 838 F.2d at 373. Further, “if language in the
 23 indictment constitutes information that the government hopes to properly prove at trial, it cannot be
 24 considered surplusage no matter how prejudicial it may be as long as the information is legally
 25 relevant.” *United States v. Gerlay*, 2009 WL 3872143 at *1 (D. Alaska, 2009).

26
 27 ¹ Defendant’s motion lists 28 items which he requests the Court strike from the indictment. Each
 28 item specifies the language sought to be stricken and provides a reason for each request. *See Motion to Strike*
Surplusage (#351).

1 Having reviewed the indictment and pleadings on file in this matter, the Court finds that the
2 contested paragraphs and portions of paragraphs are relevant to the charged conduct and therefore
3 should not be stricken from the indictment as surplusage. The indictment alleges Defendant and his
4 co-defendants conspired to sell hundreds of billions of unregistered securities through various
5 corporate shells beginning no later than 1997. *See Second Superseding Indictment* (#63). The
6 identified paragraphs and portions of paragraphs provide context and clarity to the indictment as
7 whole and lay out the factual specifications of Defendant's and his co-defendant's alleged conduct
8 during the alleged conspiracy. Therefore, the Court finds that the allegations in the indictment are
9 not inflammatory or prejudicial beyond their intrinsically inculpatory nature. Rather, the statements
10 are relevant to describe the facts and circumstances surrounding the alleged conspiracy. Further,
11 counsel for the Government has stated that the Government does not intend to read the indictment to
12 the jury at trial. Accordingly,

13 **IT IS HEREBY ORDERED** that Defendant's Motion to Strike Surplusage (#351) is
14 **denied.**

15 DATED this 14th day of January, 2016.

16
17 
18 GEORGE FOLEY, JR.
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28